IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 238 of 2001

For Approval and Signature:

Hon'ble MISS JUSTICE R.M. DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JAGDISHSINH J ZHALA

Versus

STATE OF GUJARAT

Appearance:

MR DJ BHATT for Petitioner No. 1

MR LR PUJARI APP for Respondent No. 1

RULE SERVED for Respondent No. 2

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 29/11/2001

ORAL JUDGEMENT

Heard the learned advocates.

This Revision Application under Section 397 read with Section 401 CrPC has been preferred by the accused

in Criminal Case No. 2479 of 1998 lodged in the Court of learned Judicial Magistrate, First Class, Talaja against the judgment and order datd 12th February, 2001 passed by the learned Addl. Sessions Judge, Bhavnagar in Criminal Appeal No. 29 of 1999.

The applicant is the owner of a motor vehicle, a Metador No. GJ-4T-2801. On 13th December, 1998 at around 11 O'Clock in the forenoon, two police officers caught the said vehicle carrying twenty passengers i.e., more than the capacity of the said vehicle. The applicant was driving the vehicle. Upon inquiry, the petitioner did not produce the permit. Thereupon, an offence punishable under Sections 66 (1) and 192A of the Motor Vehciles Act, 1988 was registered against the applicant. The applicant was tried for the said offence by the learned Judicial Magistrate, First Class, Talaja and by his judgment and order dated 16th September, 1999, the learned trial Judge convicted the applicant for the said offence and imposed fine of Rs. 2000/=. Feeling aggrieved, the applicant preferred Criminal Appeal No. 29 of 1999 before the Court of learned Addl. Sessions Judge, Bhavanagar which was dismissed on 12th February, 2001. Feeling aggrieved, the applicant has preferred the present Revision Application.

Mr. Bhatt has submitted that the police officers have no power to lodge complaint in respect of the offence punishable under the Motor Vehicles Act, 1988. It is the Transport Authority alone in which such power is vested. He has further submitted that the applicant was not given copy of the police complaint, therefore also, the trial is bad and requires to be set-aside. He has next contended that in any view of the matter, the prosecution has failed to establish guilt against the applicant. No independent witness nor any passenger was examined by the prosecution. The conviction of the petitioner is, therefore, no sustainable. In support of his arguments, Mr. Bhatt has relied upon Section 66 (1), 192A and 130 of the Motor Vehicles Act, 1988 [hereinafter referred to as, `the Act'].

Relying upon sub-section (1) of Section 130 of the Act, Mr. Bhatt has submitted that under the said sub-section, a police officer is expressly conferred power to demand licence of a driver. Therefore, it is implied that the police officer cannot exercise any power other than the one conferred under sub-section (1) of Section 130 of the Act. He has also submitted that under sub-section (3) of the said Section 130, it is the Transport Authority which has power to call for permit of

a vehicle and the liability has been imposed upon the owner of the vehicle to produce such permit, and therefore also, no police officer appointed under the Bombay Police Act can exercise power in respect of the offence punishable under the Act.

I see no substance in this argument. Section 130 of the Act is included in Chapter-VIII of the Act and deals with the power of the Transport Authority in respect of control of traffic. The said provision is distinct from the provisions contained in Section 66 or 192 of the Act. The same cannot be read to mean that the police officers are divested of powers to lodge a complaint in respect of the offences committed under the Act. Sub-section (1) of Section 66 of the Act expressly prohibits use of any motor vehicle without the permit. Section 192A of the Act is the penal provision under which driving a motor vehicle without the permit or in contravention of any condition of the permit has been made punishable. In the present case, it is indusputable that on questioning by the police officers, the applicant did not produce permit nor did the applicant produce the permit before the Court also. Thus, evidently, the applicant did commit offence punishable under Section 192A of the Act. It is well settled law that conviction can be recorded on evidence of police officer alone. The conviction cannot be set-aside merely because the prosecution has not examined any of the passengers or any independent witness. This being the first offence committed by the applicant, he was liable to be fined, which may extend to Rs. 5000/= but shall not be less than Rs. 2000/=. The punishment imposed upon the applicant is minimum which ought to have been imposed upon him.

The judgment of the Hon'ble Supreme Court in the matter of State of Maharashtra & Ors. vs. Nanded-Parbhanki Z.L.B.M.V. Operator Sangh, {2000 (2) SC 69} relied upon by Mr. Bhatt shall have no applicability on the facts of the present case. The question there was of seizer of a motor vehicle by the police officer in exercise of power conferred under Section 207 (1) of the Act. In the present case, the vehicle having not been seized, the judgment shall have no applicability.

No other contention is raised before me. For the reasons recorded hereinabove, the revision application is dismissed. Rule is discharged.

[Ms. R.M Doshit, J.]

Prakash*